

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR BENTON COUNTY

3 CITY OF KENNEWICK,

4 Petitioner,

5
6 v.

7 GROWTH MANAGEMENT HEARINGS
8 BOARD, EASTERN WASHINGTON REGION,

9 Agency Respondent,

10 and,

11
12 FUTUREWISE, BENTON COUNTY, and
13 KENNEWICK INDUSTRIAL DEVELOPMENT,
14 LLC,

15 Party Respondents.
16

No. 14-2-02786-6

(GMHB Case No. 14-1-0003)

**CERTIFICATE OF APPEALABILITY
(GRANTED)**

17 This matter comes before the Board pursuant to an Application for Direct Review and
18 Certificate of Appealability, filed November 26, 2014, in *City of Kennewick v. Growth*
19 *Management Hearings Board*, Benton County Superior Court Cause No. 14-2-02786-6.
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21 **I. PROCEDURAL BACKGROUND**

22 On March 4, 2014, Benton County adopted Resolution No. 2014-191 dedesignating
23 1,263 acres of “GMA Agricultural,” the county’s comprehensive plan designation for
24 agricultural lands of long-term commercial significance.¹ The resolution also added all
25 1,263 acres in the City of Kennewick urban growth area (UGA) and directed that its
26 preferred land use is to be mapped as “industrial” on the county’s comprehensive plan
27 preferred land use maps.² These actions were intended to add additional industrial lands to
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¹ Index of Record No. (IR) 31 in Tab 2014-191 to Futurewise’s Petition for Review, Benton County Resolution 2014-191 p. *3 & Map Exhibit PCM 1.5; IR 556 in Tab 556 of this Brief, *Benton County Comprehensive Plan Chapter Four – Land Use Element* p. 4-40.

² IR 31 in Tab 2014-191 to Futurewise’s Petition for Review, Benton County Resolution 2014-191 p. *3.

1 the UGA areas of Kennewick and Benton County for economic reasons, by using section
2 1301 of the GMA.³

3 Futurewise filed an appeal of Benton County Resolution No. 2014-191.⁴ The Growth
4 Management Hearings Board (Board) concluded that Benton County Resolution No. 2014-
5 191 violated several goals and requirements of the Growth Management Act (GMA).⁵

6 On November 13, 2014, the City of Kennewick appealed the Board's Final Decision
7 and Order to Benton County Superior Court.⁶ Futurewise, by participating before Benton
8 County in its adoption of Resolution No. 2014-191, has standing to defend the Board's Final
9 Decision and Order.⁷ RCW 34.05.518(6)(a) authorizes any party to file an application for
10 direct review by the court of appeals in superior court and to serve the Growth Management
11 Hearings Board with the application. The Growth Management Hearings Board then
12 decides whether to approve the Certificate of Appealability.⁸

13 14 15 **II. AUTHORITY AND ANALYSIS**

16 The Administrative Procedure Act, RCW 34.05.518, sets forth the criteria and
17 procedures for Certificates of Appealability. RCW 34.05.518(3) identifies the Growth
18 Management Hearings Board as an "environmental board," and establishes the following
19 criteria for a Certificate of Appealability:
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21 . . . (b) An environmental board may issue a certificate of appealability if it
22 finds delay in obtaining a final and prompt determination of the issues would
23 be detrimental to any party or the public interest and either:

- 24 (i) Fundamental and urgent statewide or regional issues are raised; or
25 (ii) The proceeding is likely to have significant precedential value.
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27 ³ *Futurewise v. Benton County*, Growth Management Hearings Board Case (GMHB) Case No. 14-1-0003,
28 Final Decision and Order (Oct. 15, 2014), at 2 of 38. A copy of the Final Decision and Order is attached as
Appendix A.

29 ⁴ *Futurewise v. Benton County*, Growth Management Hearings Board Case (GMHB) Case No. 14-1-0003,
Final Decision and Order (Oct. 15, 2014), at 4 of 38.

30 ⁵ *Futurewise v. Benton County*, GMHB Case No. 14-1-0003, Final Decision and Order (Oct. 15, 2014), at 37 of
31 38.

32 ⁶ *City of Kennewick v. Growth Management Hearings Board*, Petition for Review Benton County Superior
Court Case No. 14-2-02786-6, p. 1.

⁷ *Stevens County v. Eastern Washington Growth Management Hearings Bd.*, 163 Wn. App. 680, 687, 262
P.3d 507, 510 (2011).

⁸ RCW 34.05.518(3)(b).

1 RCW 34.05.518(4) requires a board to state in its Certificate of Appealability “which
2 criteria it applied [and] explain how that criteria was met.” This Board reviews the requests
3 for certification in light of each of these criteria.
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5 **A. Detrimental Delay**

6 Detrimental delay is a threshold question as the Board may not issue a Certificate of
7 Appealability unless “delay in obtaining a final and prompt determination of the issues would
8 be detrimental to any party or the public interest.” The 2012 Legislature adopted RCW
9 36.70A.1301 which authorized certain Eastern Washington cities to request that the
10 applicable county legislative authority amend the urban growth area within which the city is
11 located. The urban growth area amendment at issue in this case was requested under RCW
12 36.70A.1301.⁹ **RCW 36.70A.1301 will expire on December 31, 2015.**¹⁰
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14 The relatively short life remaining for RCW 36.70A.1301 puts a premium on a prompt
15 determination of the issues in this appeal. If there is not a final resolution of this appeal in a
16 little over a year, the City of Kennewick will be faced with expiration of RCW 36.70A.1301.
17 So a delay in the prompt determination of the issues in this case is detrimental to the City of
18 Kennewick, the Kennewick Industrial Development, LLC, and Benton County.
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20 It is also detrimental to the public interest. If this appeal is not resolved before RCW
21 36.70A.1301 expires, additional questions will be raised that the Board and the courts will
22 have to sort out. This is not an efficient use of Board and judicial resources and is not in the
23 public interest.
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25 A delay in a final and prompt determination of the issues in this appeal will be
26 detrimental to the public interests in the finality of land use decisions and in conserving
27 agricultural lands. The Washington State Supreme Court has recognized the “important
28 public policy of preserving the finality of land use decisions” including the finality of GMA
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⁹ *Futurewise v. Benton County*, GMHB Case No. 14-1-0003, Final Decision and Order (Oct. 15, 2014) at 2 of 38.

¹⁰ RCW 36.70A.1301(4).

comprehensive plans and development regulations.¹¹ A final and prompt determination of the issues in this case will advance this important public policy.

Conclusion: For the reasons stated above, the Board finds delay in this matter would be detrimental to the interests of the parties and to the interests of the public.

B. Fundamental and Urgent Statewide or Regional Issues Raised

The issue presented to the Board, and now the subject of the appeal, involves a fundamental and urgent question of regional importance regarding the applicability of section 1301 to regional economic development, including its impact on future industrial development for Benton County, the City of Kennewick, and the Kennewick Industrial Development, LLC.

Conclusion: For the reasons stated above, the Board finds this matter involves an issue of fundamental and urgent regional importance.

III. ORDER

Having reviewed the application for Certificate of Appealability, the relevant provisions of the Administrative Procedures Act, in particular RCW 34.05.518(3)(b), and the facts of this matter, the Board finds delay in obtaining a final and prompt determination of the issues will be detrimental to the parties and the public. The Board further finds fundamental and urgent statewide or regional issues are raised.

The criteria of RCW 34.05.518(3) are satisfied; the Board issues a Certificate of Appealability for direct review in Benton County Superior Court Cause No. 14-2-02786-6.

¹¹ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 345, 190 P.3d 38, 45 (2008).

1 DATED this 17th day of December, 2014.

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Charles Mosher, Board Member

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Raymond L. Paoella, Board Member

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Margaret Pageler, Board Member